

ALLTEL Corporate Services, Inc.

655 15th Street N.W.  
Suite 220  
Washington, DC 20005

202-783-3970  
202-783-3982 fax

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ALLTEL

March 17, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

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MAR 17 1997

Federal Communications Commission  
Washington, D.C. 20554

Re: Implementation of the Telecommunications Act  
of 1996 - Carriers Use of CPNI  
CC Docket No. 96-115

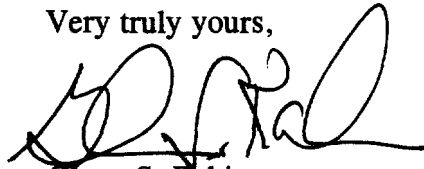
Dear Mr. Caton:

Enclosed for filing on behalf of ALLTEL Telephone Services Corporation, ("ALLTEL") please find an original and four (4) copies of its Comments in connection with the above-referenced matter.

In response to the Commission's Public Notice, DA 97-385, (released February 20, 1997), I am submitting paper copies of ALLTEL's Comments, as well as copies on a 3.5 inch diskette formatted in an IBM compatible form, using MS-DOS 5.0 and WordPerfect 5.1 software, in "read-only mode" to Ms. Janice Myles of the Common Carrier Bureau and International Transcription Services.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,



Glenn S. Rabin

GSR/ss

Enclosures

cc: Ms. Janice Myles, Common Carrier Bureau  
1919 M Street, N.W., Room 544  
(w/ 2 copies of pleading and diskette)

International Transcription Services  
2100 M Street, N.W., Room 140  
(w/ 1 copy of pleading and diskette)

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MAR 17 1997

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	
	)	CC Docket No. 96-115
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	

COMMENTS OF  
ALLTEL TELEPHONE SERVICES CORPORATION

ALLTEL Telephone Services Corporation ("ALLTEL") submits its comments in the above-captioned proceeding in response to certain of the questions raised in the Commission's Public Notice, DA 97-385 (released February 20, 1997). The Commission seeks comment on the interplay among sections 222, 272 and 274 of the Telecommunications Act of 1996 (the "1996 Act.") As a general matter, ALLTEL notes that section 222, as opposed to sections 272 and 274, are directed to entirely different

public interest policies. Section 222 applies to all telecommunications carriers and is squarely directed to the protection of subscribers' privacy interests. Sections 272 and 274, however, are based upon competitive concerns and, as a consequence, are specifically directed to only those carriers whose discriminatory use of CPNI would present a legitimate threat to competition: the Bell Operating Companies ("BOCs".) Ultimately, ALLTEL views sections 272 and 274 as independent requirements which must be met by the BOCs in addition to their section 222 obligations.

**1. Does the requirement in section 272(c)(1) that a BOC may not discriminate between its section 272 "affiliate and any other entity in the provision or procurement of... services ... and information ..." mean that a BOC may use, disclose, or permit access to CPNI for or on behalf of that affiliate only if the CPNI is made available to all other entities? If not, what obligation does the nondiscrimination requirement of section 272(c)(1) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?**

Yes. The Commission has previously interpreted section 272(c)(1) in the Non-Accounting Safeguards Order at para. 222. Viewing CPNI from the competitive concerns underlying section 272 of the Act, the Commission determined that: 1) "information" as used in section 272(c)(1) included CPNI; 2) the nondiscrimination provision of section 272(c)(1) governs the BOC's use of CPNI ; 3) BOCs must provide CPNI on a nondiscriminatory basis; and 4) the BOCs must comply with both section 272(c)(1) and section 222.

In ALLTEL's view, the Commission has, as a consequence of the Non-Accounting Safeguards Order, already made the determination that sections 272(c)(1) and 222 impose independent obligations on the BOCs; the BOC must be able to comply with both sections

in order to share CPNI with their affiliates. Consequently, where the nondiscriminatory availability of CPNI to third party carriers is a prerequisite of a BOC's ability to share CPNI with its affiliate and where the BOC must obtain subscriber consent in order to fulfill that prerequisite, ALLTEL believes that it is incumbent on the BOC or the affiliate to obtain the subscriber's consent to third party disclosure or do without the CPNI. The situation where the BOCs are permitted to share CPNI with affiliates while denying the same information to competitors under the guise of a section 222 privacy requirement, is to provide the BOCs a vehicle to accomplish in practice the same anti-competitive dealings which section 272(c)(1) and the Non-Accounting Safeguards Order were intended to prevent.

**2. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), does the nondiscrimination requirement of section 272(c)(1) mandate that a BOC's section 272 affiliate be treated as a third party for which the BOC must have a customer's affirmative written request before disclosing CPNI to that affiliate?**

No. The separation requirements of section 272(c)(1) address competitive concerns only. Section 222, and in particular, section 222(c)(1), does not either require separations or, in ALLTEL's view, treatment of a carrier's own affiliates (whether or not they are BOCs) as third parties. ALLTEL sees no basis to infer third party status on a BOC affiliate which has been separated simply to fulfill the section 272 nondiscrimination requirements.

**3. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs), treat their affiliates and other intra-company operating**

**units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone exchange service and exchange access) as third parties for which customers' affirmative written requests must be secured before CPNI can be disclosed? Must the answer to this question be the same as the answer to question 2?**

No. This question has yielded substantial comment in the instant rule making on section 222 and has no section 272 implications. ALLTEL is an independent telephone company and is not a BOC as defined in the 1996 Act. While acknowledging its obligation to obey section 222, ALLTEL argued in its comments that a subscriber's consent to the use of CPNI within a carrier's intra-company family could be inferred under section 222(c)(1) where the subscriber and the carrier had a preexisting relationship. It would be counterproductive for the Commission to require treatment of affiliated and intra-company operating units as "third parties" for purposes of section 222(c)(2). This approach is entirely consistent with the answer to question 2. Were it not for the requisite obligations imposed by the nondiscrimination provisions contained in section 272(c)(1), the BOCs would not be required to obtain affirmative written requests. Compliance with section 272, however, is a hurdle which only the BOC's must face to enter the in-region interLATA market under section 271; non-BOC carriers not otherwise subject to sections 271 and 272 should not have a similar competitive hurdle falsely erected to establish parity among local exchange carriers of disparate sizes.

**4. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with its section 272 affiliate? If for example, a BOC may disclose CPNI to its section 272 affiliate pursuant to a customer's oral approval or a customer's failure to request non-disclosure after receiving notice of an intent to disclose (i.e., opt-out approval), is the BOC required**

**to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?**

No. Unlike section 222(c)(1) under which subscriber approval may be inferred for use of CPNI between carriers with which the subscriber has a preexisting relationship and affiliates (i.e., opt-out approval), section 222(c)(2) expressly requires the "affirmative written consent" of the subscriber and presumably applies to CPNI disclosure to third party carriers with which the subscriber has no relationship. In ALLTEL's view, there are two different standards embodied in sections 222(c)(1) and 222(c)(2). Again, due to the imposition of the nondiscrimination provisions of section 272(c)(1), the BOCs are obligated to abide by the standard ultimately adopted by the Commission to govern CPNI disclosure to third parties.

**5. If section 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?**

No. See answer to question 4.

**6. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its section 272 affiliate also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated entities, when it provides such a service for its section 272 affiliate? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 272 affiliate over unaffiliated entities? If the customer approves disclosure to both the BOC's section 272 affiliate and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 272 affiliate?**

A BOC need only solicit subscriber approval on behalf of unaffiliated entities where the BOC intends to provide CPNI to its affiliate. In such cases, the BOC must, under the provisions of section 272(c)(1), provide the same information on nondiscriminatory terms to unaffiliated entities.

**7. If, under sections 222(c)(1), 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliate and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI, what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section 272(c)(1)? What specific obligations with respect to the use, disclosure and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?**

Sections 222(c)(1) and 222(c)(2), which are directed to the protection of subscribers' privacy interests, do not contain any provision touching on discrimination. Rather, section 222(c)(3) requires that local exchange carriers using aggregate customer information (defined at section 222(f)(2) as distinct from CPNI) make aggregate customer information available on nondiscriminatory terms. In ALLTEL's view, section 272(g)(3) should not be viewed as a blanket exception from the nondiscrimination provisions of section 272(c), but rather as a limited rule of construction which permits BOCs to jointly market with, and provide CPNI to, affiliates engaged in the businesses listed in section 272(a)(2) without providing the Commission a basis to deny the BOC's application for entry into the long distance market under section 271(d)(3)(B). ALLTEL's view of the limitations of section 272(g)(3) is bolstered by the language of Section 272(e)(2), which separately prohibits a BOC (in a manner similar to that of section 272(c)) from providing facilities, services, or information concerning its provision of exchange access to an

affiliate unless the facilities, services or information are made available to other providers of interLATA services in the market on the same terms and conditions. In the last analysis, and without regard to the construction of section 272(g)(3), the Commission may still impose nondiscrimination safeguards on the BOCs' use of CPNI when joint marketing with affiliates under the broad authority preserved for the Commission in section 272(f)(3). ALLTEL Telephone therefore believes that a BOC's section 222 obligations remain the same as those of any other carrier. Were the construction of section 272(g)(3) to be limited, a BOC would still be required under section 272(c) to ensure that CPNI is available to non-affiliated entities on a non-discriminatory basis. As with other activities subject to section 272, a BOC should not be able to evade a competitive safeguard simply because its activities are conducted through joint marketing efforts with an affiliate.


**9. Does the phrase "information concerning [a BOC's] provision of exchange access "in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase " services ... concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI related approval solicitation service? If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC "shall not provide any ... services ... or information concerning its provision of exchange access to [its affiliate] unless such ... or information are made available to other providers of inter LATA services in that market on the same terms and conditions"?**

ALLTEL believes that the term "information" should be construed consistently for both sections 272(c) and 272(e) to include CPNI. The Commission has already construed "information" to include CPNI in the Non-Accounting Safeguards Order. ALLTEL is concerned less with what a BOC must do to obtain subscriber's consent to provide non-affiliates with CPNI to satisfy the section 272(c) nondiscrimination requirements than it is

with the preservation of the notion underlying the competitive safeguard. A BOC may not provide CPNI to an affiliate without making it available to non-affiliates. ALLTEL believes that the BOCs should be accorded a degree of discretion in the manner in which they comply with section 222 in order to permit disclosure of CPNI to non-affiliates.

Respectfully submitted,

ALLTEL Telephone Services Corporation

By: 

Glenn S. Rabin  
Federal Regulatory Counsel

ALLTEL Corporate Services, Inc.  
655 15th Street, N.W.  
Suite 220  
Washington, D.C. 20005

(202) 783-3976

**CERTIFICATE OF SERVICE**

I, Glenn S. Rabin, hereby certify that a copy of the foregoing "Comments of ALLTEL Telephone Services Corporation" was mailed this 17th day of March, 1997, via first class U.S. Mail, postage prepaid, to the individuals listed on the attached (unless otherwise noted).

A handwritten signature in black ink, appearing to read 'G. S. Rabin', written over a horizontal line.

Glenn S. Rabin

Regina Keeney, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, Room 500  
Washington, D.C. 20554  
(hand delivered)

Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554  
(hand delivered) (with diskette)

International Transcription Services  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037  
(hand delivered)

Jack B. Harrison, Esquire  
Frost & Jacobs  
Attorneys for Cincinnati Bell  
Telephone Company  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, Ohio 45202

Michael J. Shortley, III, Esquire  
Attorney for Frontier Corporation  
180 South Clinton Avenue  
Rochester, New York 14646

Albert H. Kramer, Esquire  
Robert F. Aldrich, Esquire  
Attorneys for IntelCom Group (U.S.A.), Inc.  
Dickstein, Shapiro & Morin, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20554

David A. Gross  
Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
1818 N Street, N.W., Suite 800  
Washington, D.C. 20004-2404

Catherine R. Sloan  
Richard L. Fruchterman, Esquire  
Richard S. Whitt, Esquire  
Worldcom, Inc.  
d/b/a LDDS WorldCom  
1120 Connecticut Avenue, N.W., Suite 400  
Washington, D.C. 20036

Charles C. Hunter, Esquire  
Hunter & Row, P.C.  
1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006

James D. Ellis, Esquire  
Robert M. Lynch, Esquire  
David F. Brown, Esquire  
SBC Communications, Inc.  
175 E. Houston, Room 1254  
San Antonio, Texas 78205

Bradley Stillman, Esquire  
Counsel for Consumer Federation of America  
1424 16th Street, N.W.  
Suite 604  
Washington, D.C. 20036

Frank W. Krogh, Esquire  
Donald J. Elardo  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue., N.W.  
Washington, D.C. 20006

Andrew D. Lipman, Esquire  
Mark Sievers, Esquire  
Swidler & Berlin, Chartered  
MFS Communications Company, Inc.  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Randolph J. May, Esquire  
Sutherland, Ashbill & Brennan  
Compuserve Incorporated  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

William B. Barfield, Esquire  
M. Robert Sutherland, Esquire  
BellSouth Corporation  
Suite 1700  
1155 Peachtree Street, N.E.

Mary McDermott, Esquire  
Linda Kent, Esquire  
Charles D. Cosson, Esquire  
Keith Townsend, Esquire  
United States Telephone Association  
1401 H Street, Suite 600  
Washington, D.C. 20005

Albert Halprin, Esquire  
Joel Bernstein, Esquire  
Attorneys for the Yellow Pages  
Publishers Association  
Halprin, Temple, Goodman and Sugrue  
1100 New York Avenue, N.W., Suite 650E  
Washington, D.C. 20005

Theodore Case Whitehouse, Esquire  
Michael F. Finn, Esquire  
Wilkie, Farr & Gallagher  
The Association of Director Publishers  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20036-3384

Charles H. Helein, General Counsel  
Helein & Associates, P.C.  
America's Carrier's  
Telecommunications Association  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102

Phillip F. McClelland  
Assistant Consumer Advocate  
Irwin A. Popowsky Consumer Advocate  
Office of Attorney General  
Office of Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Assemblyman Anthony J. Genovesi  
New York State Assemblyman  
Legislative Office Building  
Room 456  
Albany, New York 12248-0001

Danny E. Adams, Esquire  
Steven A. Augustino, Esquire  
Kelley Drye & Warren, LLP  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036

Carl W. Northrop, Esquire  
Christine M. Crowe, Esquire  
Paul, Hastings, Janofsky & Walker  
1299 Pennsylvania Avenue, N.W., 10th Floor  
Washington, D.C. 20004-2400

Mary Mack Adu, Esquire  
Peter Arth, Jr., Esquire  
Edward W. O'Neill, Esquire  
Attorneys for the People of the State of  
California and the Public Utilities  
Commission of the State of California  
505 VanNess Avenue  
San Francisco, CA 94102

Kathryn Marie Krause, Esquire  
Attorney for U S West, Inc.  
Suite 700  
1020 19th Street, N.W.  
Washington, D.C. 20036

Margaret E. Garber, Esquire  
Attorney for Pacific Telesis Group  
1275 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20004

Lucille M. Mates, Esquire  
Sarah R. Thomas, Esquire  
Patrick L.C. Mahoney, Esquire  
Attorneys for Pacific Telesis Group  
140 New Montgomery Street, Room 1522A  
San Francisco, CA 94105

Mark J. Golden, Esquire  
Vice President of Industry Affairs  
Personal Communications  
Industry Association  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314-1561

Saul Fisher, Esquire  
Thomas J. Farrelly, Esquire  
Attorneys for NYNEX Telephone Companies  
1095 Avenue of the Americas  
New York, NY 10036

David J. Gudino, Esquire  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, D.C. 20036

Joseph P. Markoski, Esquire  
Marc Berejka, Esquire  
Squire, Sanders & Dempsey  
Technology Association of America  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20044

Jay C. Keithley, Esquire  
Leon M. Kestenbaum, Esquire  
Norina T. Moy, Esquire  
Sprint Corporation  
1850 M Street, N.W., Suite 1100  
Washington, DC 20036

Albert H. Kramer, Esquire  
Robert F. Aldrich, Esquire  
American Public Communications Council  
Dickstein, Shapiro & Morin, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20553

Jonathan E. Canis, Esquire  
Reed, Smith, Shaw & McClay  
Virginia Islands Telephone Corporation  
1301 K Street, N.W.  
Suite 1100 - East Tower  
Washington, D.C. 20005

Paul Rodgers, General Counsel  
National Association of  
Regulatory Utility Commissioners  
1201 Constitution Avenue, Suite 1102  
Post Office Box 684  
Washington, D.C. 20044

Ann P. Morton, Esquire  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Alan N. Baker, Esquire  
Michael S. Pabian, Esquire  
Attorneys for Ameritech  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196

Lawrence W. Katz, Esquire  
The Bell Atlantic Telephone Companies  
1320 North Court House Road  
Eighth Floor  
Arlington, Virginia 22201

Thomas K. Crowe, Esquire  
Law Offices of Thomas K. Krowe, P.C.  
Counsel for Excel Telecommunications, Inc.  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037

Jackie Follis, Senior Policy Analyst  
Office of Regulatory Affairs  
Public Utility Commission of Texas  
7800 Shoal Creek Boulevard  
Austin, Texas 78757

Danny E. Adams, Esquire  
Steven A. Augustino, Esquire  
Kelley Drye & Warren, LLP  
1200 Nineteenth Street, N.W., Suite 500  
Washington, D.C. 20036

Teresa Marrero, Esquire  
Senior Regulatory Counsel  
Teleport Communications Group, Inc.  
One Teleport Drive  
Suite 300  
Staten Island, NY 10310

Mark C. Rosenblum, Esquire  
Leonard J. Cali, Esquire/Judy Sello  
Attorneys for AT&T Corp.  
Room 3244J1  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920